

**STATE OF ARIZONA**  
**CITIZENS CLEAN ELECTIONS COMMISSION**

MUR: No. 06-0012 and 06-0013

STATEMENT OF REASONS OF EXECUTIVE DIRECTOR

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On behalf of the Citizens Clean Elections Commission (the “Commission”), the Executive Director hereby provides the Statement of Reasons for the recommendation that the Commission find no reason to believe that violations of the Citizens Clean Elections Act and Commission rules (collectively, the “Act”) occurred.

**I. Procedural Background**

On August 23, 2006, David Waid (the “Complainant”), Chairman of the Arizona Democratic Party, filed a complaint (the “Complaint”), together with supporting documentation, against Janice K. Brewer (the “Respondent”), a participating candidate for Secretary of State, alleging possible violations of Arizona election law. In particular, the Complainant alleges that an advertisement featuring Respondent in her capacity as Secretary of State constitutes either an illegal contribution or expenditure or an independent expenditure in favor of Respondent.

On August 24, 2006, Jeanne Winograd, a private individual, filed a second complaint against Respondent. Ms. Winograd’s complaint was deemed not to comply with the requirements of A.A.C. R2-20-203 and Ms. Winograd was so notified in accordance with A.A.C. A.A.C. R2-20-204. Ms. Winograd’s complaint relates to the same television advertisement featuring Respondent that is the basis for the Complaint.

On August 25, 2006, Respondent filed a reply (the “Reply”), together with supporting documentation, responding to the matters described in the Complaint.

**II. Factual Background**

The Executive Director finds the following facts are supported by the Complaint, the Reply, the supporting documentation and information provided by the Respondent and obtained through the preliminary inquiries of Commission staff.

Respondent appears in a television advertisement of approximately thirty seconds in length, in which she identifies herself by name and as the Secretary of State. The following is a transcript of the advertisement:

*[Actors]: I.D. I.D. I.D. I.D. I.D. I.D.*

*[Voice Over]: When the big day comes, make sure you bring it. Have a current driver's license or two other valid forms of I.D. when you go to vote.*

*[Respondent]: Hi, I'm Jan Brewer, Arizona Secretary of State. This election day, be prepared with proper identification and be prepared to make a difference.*

Tricia Kashima is Media Supervisor for RIESTER, the media and public relations agency that placed the advertisement at the direction of the Secretary of State's office.<sup>1</sup> Ms. Kashima asserts that the advertisement was aired on multiple television stations in the Phoenix and Tucson markets, including KPNX, KTVK, KSAZ and KOLD.<sup>2</sup> Documentation obtained from KPHO and submitted in support of the Complaint indicates the advertisement began airing on that station in August, 2006.<sup>3</sup> (Exhibit A)

### III. Analysis

#### A. Do the Advertisements Constitute a Contribution to Respondent?

Arizona Revised Statutes § 16-901(5) sets forth the following definition for the term "contribution":

*"Contribution" means any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election ... and ...*

*(b) Does not include any of the following: ...*

*(ii) Money or the value of anything directly or indirectly ... **provided by the state or a political subdivision to an elected official for communication with constituents if the elected official is engaged in the performance of the duties of his office.***

The advertisement was paid for from the budget of the Secretary of State's office in connection with the performance of Respondent's official duties to oversee statewide elections. The state-paid cost of communications with constituents by an elected official engaged in performance of her duties is explicitly excluded from the definition of contribution pursuant to § 16-901(5)(b)(ii). Therefore, I believe that the value of the advertisements should not be considered a contribution to Respondent's campaign.

#### B. Do the Advertisements Constitute an Expenditure?

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<sup>1</sup> Telephone Interview by Eric Peterson with Tricia Kashima, Media Supervisor, RIESTER (August 25, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> See Paid Political Broadcast Avail form (June 8, 2006) (submitted as supporting documentation with the Complaint, on file with Citizens Clean Elections Commission); see also Telephone Interview by Eric Peterson with Mitchell Nye, General Sales Manager, KPHO CBS 5 (August 25, 2006) (use of Paid Political Broadcast Avail form was initiated by station sales representatives based on Respondent's appearance therein, although the station ultimately concluded that the advertisement was not a candidate advertisement).

Arizona Revised Statutes § 16-901(8) sets forth the following definition for the term “expenditures”:

*“Expenditures” includes any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state ... Expenditure **does not include** any of the following:*

*... (b) **Nonpartisan activity designed to encourage individuals to vote or to register to vote.*** (Emphasis added.)

In her Reply, Respondent denies that her campaign committee authorized, coordinated or paid for any of the expenses related to the advertisements. She declares that the Secretary of State’s office was responsible for the issuance of the advertisements. Respondent further argues that advertisements are “purely informational in scope about upcoming election requirements, which are being implemented on a statewide basis for the first time during the primary and general elections.”

Based on their message reminding voters to bring valid identification to the polls, I believe that the advertisements constitute “[n]onpartisan activity designed to encourage individuals to vote” as described in A.R.S. § 16-901(8)(b). I therefore believe that the advertisements are excluded from the general definition of expenditures set forth in A.R.S. § 16-901(8).

C. Do the Advertisements Constitute an Independent Expenditure on Behalf of Respondent?

Arizona Revised Statutes § 16-901(14) sets forth the following definition for the term “independent expenditures”:

*“Independent expenditure” means an expenditure by a person or political committee, other than a candidate’s campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.*

Having concluded that the advertisement is not an expenditure as defined in A.R.S. § 16-901(8), it follows that it cannot constitute an independent expenditure. However, even if the advertisement is deemed not to fall within the exclusion articulated at A.R.S. § 16-901(8)(b), I do not believe that it contains express advocacy in support of Respondent’s re-election campaign.

The standard for determining whether the advertisements’ messages constitute express advocacy is set forth in A.R.S. §16-901.01. The advertisements do not contain

the so-called “magic words” such as “vote for” or “elect” that would qualify as express advocacy under A.R.S. §16-901.01(A)(1). However, the advertisements might still constitute express advocacy pursuant to A.R.S. §16-901.01(A)(2), which defines express advocacy to include:

*... a general public communication, such as in a broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):*

*(a) That in context can have **no reasonable meaning other than to advocate the election or defeat of the candidate(s)**, as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents...*

In addition, the Commission has also adopted A.A.C. R2-20-109(D)(3)(C), which provides the following guidance for determining whether a message constitutes express advocacy:

*It must be clear what action is advocated. Speech cannot be “express advocacy of the election or defeat of a clearly identified candidate” when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. **If any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act’s disclosure requirements.** (Emphasis added.)*

Respondent argues that the advertisement was not intended to advocate the election or defeat of Respondent, but merely to encourage voters to bring valid identification to the polls. The plain language of the advertisement is consistent with this stipulated purpose. The timing of the advertisement – which began airing during the early voting period and will continue through the general election – is appropriate given its subject matter and the advertisement therefore should not be treated as express advocacy on that basis.

Given Respondent’s official duties to oversee statewide elections, and in light of the voter identification requirements<sup>4</sup> in effect for the first time in this election cycle, I believe that Respondent’s stipulated purpose for the advertisement is reasonable. I therefore recommend against finding that the advertisement contains express advocacy or constitutes an independent expenditure.

#### **IV. Recommendations**

For the foregoing reasons, I conclude that the advertisement featuring Respondent does not constitute a contribution, an expenditure or an independent expenditure. Moreover, I conclude the advertisement does not trigger any reporting requirements or

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<sup>4</sup> See A.R.S. § 16-579.

matching funds or otherwise implicate provisions of the Act. I therefore recommend that the Commission find no reason to believe that Respondent violated the Act on account of the advertisement or her appearance in it.

Dated this 28th day of August, 2006

By: \_\_\_\_\_  
Todd Lang